IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2018 OF 2006.

Shri Pankajkumar Chimanlal Bhatt,
Age 59 years, residing at
201, Srivijay CHS Ltd., Sector-2,
Charkop-1, Kandivali (West),
Mumbai 67. ... Applicant.

Versus.

1. Smt.Maya Pankaj Bhatt @ Maya
Banarasilal Thakur,
residing at C/o.Ramdayal Thakur,
430, Main Street, Devlali,
Taluka & Dist. Nashik 422 401.
2. State of Maharashtra. ... Respondents.

Shri Prakash Naik for the Applicant.

Shri S.M.Gorwadkar for the Respondent No.1.

Shri Rajesh More, A.P.P. for the State.

CORAM : ABHAY S.OKA, J.

DATED : 18th September, 2006.

ORAL JUDGMENT.:

1. The submissions of the learned Advocates appearing for the parties were heard on the last date. This Criminal Application filed under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code) takes exception to the Judgment and order passed by the learned Fifth Adhoc Additional Sessions Judge on 5th April 2006 rejecting an Application for stay of proceedings of the Criminal Revision Applications pending in the said Court.

2. The 1st Respondent-wife filed an application under section 125 of the said Code against the Applicant in the Court of Judicial Magistrate First Class, Nashik. The Application was contested by the Applicant by contending that the 1st Respondent was not his lawfully wedded wife. By Judgment and order dated 9th April 2003 the application made by the 1st Respondent was rejected by the learned Magistrate. However, the learned Magistrate came to the conclusion that the 1st Respondent has established her status as the wife of the Applicant. The 1st Respondent filed a Revision Application before the Sessions Court for challenging the said Judgment and order. Being aggrieved by the finding recorded by the learned Magistrate as regards the status of the 1st Respondent, the Applicant also preferred a separate Revision Application against the same order. An Application was filed by the Applicant at Exh.20 in the pending Revision Applications praying for stay of the proceedings of both the Revision Applications till the decision of the Special Civil Suit No.120 of 2001 filed by the 1st Respondent in the Civil Court. The contention of the Applicant was that the said suit was filed by the 1st Respondent under section 18 of the Hindu Adoption and Maintenance Act, 1956 for maintenance and in the said suit, the Civil Court is bound to decide the issue of the existence of legal and valid marriage between the Applicant and the 1st Respondent. A submission was made that as the order of

the Civil Court will be binding on the Criminal Court, proceedings of the Revision Applications may be stayed till the disposal of Civil Suit. The said Application was rejected by the impugned order.

3. The learned Counsel appearing for the Applicant placed reliance on the decision of the learned Single Judge of this Court in the case of Ravindra Haribhau Karmarkar v/s. Shaila Ravindra Karmarkar and another (1992 B.Cr.C. 167). He submitted that as the dispute regarding existence of legal and valid marriage between the Applicant and the 1st Respondent will be decided in the Civil Suit filed by the 1st Respondent, till disposal of the Civil Suit, the Revision Applications should not be heard. He submitted that this is the precise view taken by the learned Single Judge of this Court in the case of Ravindra Haribhau Karmarkar (supra). He submitted that no prejudice will be caused to the 1st Respondent as the prayer for maintenance made by the 1st Respondent is already rejected.

4. Shri Gorwadkar appearing for the 1st Respondent submitted that the view taken by the learned Single Judge in the case of Revindra Haribhau Karmarkar (supra) is in the peculiar facts of the said case and the same will not apply to the factual matrix of this case. He submitted that in any event the view taken by the learned Single Judge is per incuriam in the light of the

various decisions relied upon by him.

5. I have carefully considered the submissions. In the case before the learned Single Judge in the case of Ravindra Haribhau Karmarkar (supra), an application for maintenance was filed by the wife under section 125 of the said Code against her husband. She had also filed a civil suit for permanent alimoney. In the said suit, an interim order was passed. The Applicant-husband filed an Application praying for stay of the proceedings of the Application under section 125 of the said Code. In paragraph 8 of the said decision, the learned Single Judge observed thus:

> "8. The findings given by the Civil Court are binding on the Criminal Court. Therefore, as the matter is seized with the Civil Court i.e. in respect of the maintenance allowance and that too the similar amount which she alleged to be entitled in the application under section 125 of the Criminal Procedure Code, instead multiplying the litigation and to harass the application to lead the evidence in different two courts, in the interest of justice, the application pending in the Court of Judicial Magistrate, First Class, Buldana be stayed till the decision in the Reg.C.S.No.227/86. It is further submitted

that any verdict given by the Criminal Court is not binding on the Civil Court but it is vice versa. The reliefs being the one and the same, the evidence will be common, so also the documents, it is in the interest of both the parties to get the verdict from the Civil Court."

After referring to certain decisions in paragraph 17, the learned Single Judge proceeded to hold thus:

"17. The non-applicants could not be allowed to ride two horses at a time (two simultaneous proceedings in two different Courts) and could not be permitted to continue the maintenance proceedings under section 125 of Criminal Procedure Code when they had already chosen the alternative remedy in Reg.C.S.No.227/86. It is well-settled law that the judgment of Civil Court shall prevail over the judgment of Criminal Court. **The natural justice demands that parallel proceedings cannot be allowed to continue in different Courts."** (Emphasis supplied).

6. A Division Bench of this Court in re Taralakshmi Manuprasad (AIR 1938 Bombay 499), held that mere existence of a decree of a civil suit directing a

certain sum to be paid for maintenance does not oust the jurisdiction of a Magistrate in a proper case to make an order under section 488 of the Code of Criminal Procedure, 1898. The Apex Court in the case of Captain Ramesh Chander Kaushal v/s. Mrs.Veena Kaushal and others (AIR 1978 Supreme Court 1807) considered the provisions of section 125 of the said Code. The Apex Court held that broadly stated and as an abstract proposition, it is valid to assert that final determination of a civil right by a Civil Court must prevail against a like decision of a Criminal Court. But this principle has no application to a case where pending the proceedings under section 125 of the Code of Criminal Procedure, 1973 a Civil Court passed an interim order of maintenance of the wife in proceedings for divorce by the husband.

7. The Apex Court had an occasion to consider the scope of enquiry under section 125 of the said Code when the dispute is about the existence of marriage between the Applicant-wife and the Respondent-husband. In the case of Santosh (Smt.) v/s. Naresh Pal [(1998) 8 S.C.C. 447], the Apex Court held thus:

> "However, learned Judicial Magistrate after considering this question came to the conclusion that the respondent was already divorced from his first wife and thereafter he

had entered into a second marriage with the appellant who was also a divorcee. The High Court took the contrary view and observed that the appellant had not proved that she was the married wife of the respondent and that she had her first husband, Satendra and there was no dissolution of her marriage with him. These are the questions which are required to be thrashed out finally in civil proceedings. **In a proceeding for maintenance under section 125 Cr.P.C. the learned Magistrate was expected to pass appropriate orders after being prima facie satisfied about the marital status of parties. It is obvious that the said decision will be a tentative decision subject to final order in any civil proceedings, if the parties are so advised to adopt. Consequently, in our view the High Court was not justified in interfering with the pure finding of fact reached by learned Judicial Magistrate in a proceeding under section 125 Cr.P.C."** (Emphasis supplied).

In another decision in the case of Dwarika Prasad Satpathy v/s. Bidyut prava Dixit and another [(1999) 7 S.C.C. 675], the Apex Court held in paragraph 9 thus:

"9. **It is to be remembered that the order**

passed in an application under Section 125 Cr.P.C. does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide a summary remedy for providing maintenance to a wife, children and parents. For the purpose of getting his rights determined, the appellant has also filed a civil suit, which is pending before the trial court. In such a situation, this Court in S.Sethurathinam Pillai v. Barbara observed that maintenance under section 488 Cr.P.C. 1898 (similar to section 125 Cr.P.C.) cannot be denied where there was some evidence on which conclusion for grant of maintenance could be reached. **It was held that order passed under section 488 is a summary order which does not finally determine the rights and obligations of the parties; the decision of the criminal court that there was a valid marriage between the parties will not operate as decisive in any civil proceeding between the parties."**

(Emphasis supplied).

After holding as aforesaid, the Apex Court concluded that:

"13. Hence, in our view from the evidence which is led if the Magistrate is prima facie

satisfied with regard to the performance of marriage in proceedings under Section 125 CrPC which are of a summary nature, **strict proof of performance of essential rites is not required. Either of the parties aggrieved by the order of maintenance under Section 125CrPC can approach the civil court for declaration of status as the order passed under Section 125 does not finally determine the rights and obligations of the parties."** (Emphasis supplied).

A Division Bench of this Court in the case of V. v/s. P. (1994 Mah.L.J. 1251) has considered the scope of enquiry under section 125 of the said code. In paragraph 17, the Division Bench held thus:

"17. .....Under these circumstances, the correct position in law is virtually that **even if section 125 proceedings have been resorted to or if they are pending, that the matrimonial Court must realistically assess the requirements when an application for maintenance is filed and pass a fair and just order. That order would supersede whatever orders might have been passed in the section 125 Criminal Procedure Code proceedings. On the passing of such an order, it only follows**

that the proceedings under section 125 Criminal Procedure code would virtually come to an end and the orders if any passed in those proceedings would merge in the orders passed by the Matrimonial Court." (Emphasis supplied).

8. The learned Single Judge of this Court in the case of Gomaji Ghanshyam Mohadikar v/s. Yashoda w/o.Gomaji Mohadikar (1996(1) Mah.L.J. page 423) had occasion to deal with the case of Ravindra Karmarkar v/s. Shaila (supra). In paragraph 8 of the said decision the learned Single Judge held thus:

"8. The judgment of this Court in Ravindra Karmarkar's (supra) is clearly distinguishable and cannot be applied on the facts and in the circumstances of the case, because in that case, Civil Court had already granted interim maintenance on the application filed by the wife and in that context this Court observed that the wife in that case cannot be allowed to ride two horses at a time i.e. she cannot be allowed to proceed with two simultaneous proceedings in different Courts for maintenance. In the present case, admittedly, no maintenance pedente lite has been awarded by the Civil Court and, therefore, the

judgment in the case of Ravindra Karmarkar vs. Shaila (cited supra) has no application."

9. The learned Single Judge in the case of Ravindra Karmarkar (supra) has held that the wife cannot prosecute two simultaneous proceedings for maintenance viz. civil proceedings and a proceeding under section 125 of the said Code. In paragraph 9 of the said decision, the learned Single Judge has noted that the decision of the Civil Court was binding on the Criminal Court but not vice versa. If the aforesaid decisions of the Apex Court as well as the decision of the Division Bench of this Court in the case of V. v/s. P. are considered, it is obvious that the decision of the learned Single Judge in the case of Ravindra (supra) cannot be read as a binding precedent laying down that where there is a dispute about the existence of marriage and a civil proceeding involving the said issue is pending between the parties, the proceedings of the Application under section 125 will have to be stayed. The view taken by the Apex Court is that there is no bar for prosecuting the proceedings under section 125 of the said Code even if Civil Court proceedings are pending at the instance of the wife for grant of maintenance. In the case of Santosh v/s. Naresh Pal (supra), the Apex Court held that in the case of an Application under section 125 of the said Code where there is a dispute regarding existence of the marriage, the learned

Magistrate is expected to pass appropriate orders after being prima-facie satisfied about the marital status of the parties. The Apex Court held that decision will be a tentative decision subject to the final adjudication in the civil proceeding. The view taken by the Division Bench of this Court in the case V. v/s. P. is very specific on the point. This Court held that an order passed under section 125 of the Code will virtually come to an end after a Civil Court adjudicates upon the dispute in the matrimonial petition and in fact the order passed in proceeding under section 125 of the Code will merge in the order passed by the Matrimonial Court. The sum and substance of the above discussion is that the decision of the learned Single Judge in the case of Ravindra Haribhau Karmarkar (supra) cannot be read as a binding precedent.

9. In this view of the matter, the learned Sessions Judge has not committed any error by rejecting the Application for stay and hence the Criminal Application is rejected.

Judge.